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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-fifth session

SUMMARY RECORD OF THE 1058th MEETING

PRI

Held at the Palais des Nations, Geneva,
on Thursday, 11 August 1994, at 3 p.m.

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Chairman: Mr. GARVALOV

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GE.94-18507 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Ninth periodic report of Australia (CERD/C/223/Add.1)

1. At the invitation of the Chairman, Mr. Tickner (Federal Minister for Aboriginal and Torres Strait Islander Affairs), Mr. Dodson (Aboriginal and Torres Strait Islander Social Justice Commissioner) and Mr. Willis (Australia) took places at the Committee table.

2. Mr. TICKNER (Australia), reiterating Australia's unequivocal support for the work of the Committee, said that he wished to set out his Government's position on issues relating to Aboriginal and Torres Strait Island people; that question would then be considered by the independent Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr. Michael Dodson. The Committee would see that their respective views diverged somewhat on the question, and although he did not associate himself unreservedly with Mr. Dodson's severe judgement on the situation, he would point out that the frankness with which he could express his point of view well reflected the democratic spirit of which Australia was so proud and the importance in his country of human rights, to which it was so profoundly committed.

3. Great progress had been made in the past three years concerning the rights of Aboriginal and Torres Strait Island peoples, and the International Convention on the Elimination of All Forms of Racial Discrimination had played a significant role in that regard. He wished first of all to draw attention to the very beneficial policy of multiculturalism, instituted by Prime Minister Bob Hawke in 1989 and embodied in the National Agenda for a Multicultural Australia, which focused on three areas: cultural identity, social justice and economic efficiency. The many National Agenda projects and measures either had been finalized or were well on their way to completion. Initiatives forming part of the National Agenda included the Community Relations Strategy and the strengthening of the Access and Equity Strategy. The latter aimed to remove linguistic, cultural, racial and religious barriers to the participation of everyone in the design and delivery of all government programmes and services, and to ensure an equitable distribution of the resources it managed on behalf of the whole community. A cross-portfolio evaluation of the Access and Equity Strategy had been undertaken and its major findings were set out in a government report that was quite critical of what had been achieved for indigenous peoples. An independent parliamentary committee had submitted recommendations in that regard to the Government, calling for sweeping changes to make the Strategy fully effective.

4. The Federal Government and the Governments of the States and Territories had reacted favourably to the report of the Royal Commission into Aboriginal Deaths in Custody and had approved its 339 recommendations. The Australian Government had committed $A 400 million over a period of five years to carry out the measures recommended. The implementation of those recommendations would, regrettably, be a hard task, in part because two thirds of them related to the police, prisons and reforms of the criminal justice system in the

governments of the states and territories. The problem was all the more complex because the legislative power of the Commonwealth was limited and the regulation of routine policing practices did not come within its purview. Notwithstanding those difficulties, he was convinced that the situation concerning the rights of indigenous peoples was improving in Australia.

5. It was worth recalling the background to the Aboriginal and Torres Strait Islander Commission that had succeeded the Aboriginal Affairs Department. A new body composed of 35 democratically elected regional councils represented the Aboriginal and Torres Strait Island peoples. That unique institution's aims were to ensure maximum participation of indigenous peoples in the formulation and implementation of policies affecting them, to promote indigenous self-management and self-sufficiency, to assist in the economic, social and cultural development of indigenous peoples and to coordinate the formulation and implementation of all policies and programmes for their benefit. The Commission had a budget of $A 1 billion to be administered by elected commissioners and its Board of Commissioners. Reforms were under way in the Commission. Amendments had been passed by Parliament with a view to enhancing its effectiveness and enabling it to delegate its responsibilities better to governments at the various regional levels and to establish indigenous self-governing bodies. The idea of self-government was quite new in Australia although common in the United States and Canada. He hoped that progress would be made in those areas, in particular with a view to the celebration of the centenary of the Australian nation.

6. The Mabo decision had been taken on 3 June 1992 by the High Court of Australia, in a case concerning the rights of the Meriam people to the lands of the Murray Islands in the Torres Strait. The High Court had held that the common law of Australia recognized a form of native land title to be determined in accordance with indigenous law and custom. It had rejected the notion that Australia was had been terra nullius, land belonging to no one, at the time of settlement, and that native title to the land had not survived the vesting of radical title in the Crown. That decision was most relevant to those of Australia's indigenous peoples who continued to lead a traditionally oriented lifestyle and maintained a traditional connection with land where native title had not been extinguished by, for example, an invalid grant of an inconsistent interest in land by the Crown. The Mabo decision was of crucial importance in the history of Australia and he wished to pay a tribute to the Australian Prime Minister Paul Keating, who had made such a decision possible at the dawn of the International Year for the World's Indigenous People (1993). The Federal Government had responded to that decision firstly by passing the Native Title Act in November 1993 to protect Aboriginal and Torres Strait Islander land rights. The Government of Western Australia had, for its part, tried to invalidate the High Court's decision by passing another law. He hoped that the Federal Racial Discrimination Act, based on the International Convention on the Elimination of All Forms of Racial Discrimination, would confirm Aboriginal and Torres Strait Islander land rights. For the entire Australian nation, which had followed with passion the campaign on behalf of indigenous people, the passage of the Native Title Act had been one of the most enriching experiences in its collective life. The Australian Government had subsequently established the National Aboriginal and

Torres Strait Islander Land Acquisition Fund, to which $A 1.5 billion would be allocated over the next 10 years. The Fund would be managed by a largely indigenous board. Lastly, the Federal Government had committed itself to ensuring social justice by 1995 through a process of consultation on behalf of indigenous peoples. The key elements of that process of consultation were explained in detail in a document that he could make available to the Committee. That programme should make it possible to secure broader recognition of indigenous peoples' rights in a variety of fields.

7. The Australian Government was also endeavouring to meet indigenous peoples' aspirations and to extend the possibilities of dialogue between Aboriginals and the non-Aboriginal community in local administrations, churches, business circles, the trade union movement and community organizations. A process of reconciliation had been launched in 1991 with three objectives: first, the preparation of a formal document on the basis of consultations particularly with a view to the celebration of Australia's centenary in 2001; secondly, the promotion of social justice for indigenous peoples; and, thirdly, a campaign of sensitization to the history, culture and dispossession of Aboriginal people. That campaign, directed by Patrick Dodson, called for good will by all concerned to move forward the process of reconciliation in the Commonwealth of Australia. In conclusion, he wished to extend an invitation to all members of the Committee to visit Australia for the centenary of its federation and to see at first hand the progress being made by the country in the field of human rights. A large number of documents on the matters he had raised were at the disposal of the members of the Committee and he was ready to answer any questions they might wish to ask.

8. The CHAIRMAN thanked the representative of Australia for his presentation, which was all the more interesting for his sometimes critical comments on the services of his own country.

9. Mr. DODSON (Australia) said that he was pleased to have the opportunity, as the Aboriginal and Torres Strait Islander Social Justice Commissioner, of setting before the Committee his views on Australia's ninth report. His post had been created a few months earlier in implementation of a recommendation by the Royal Commission into Aboriginal Deaths in Custody and to give effect to the conclusions of a report by the former Race Discrimination Commissioner, whose duties he had been performing ad interim since the Commissioner's resignation. As Aboriginal and Torres Strait Islander Social Justice Commissioner, he was required to report each year to the Commonwealth Attorney General on the exercise of human rights by Australian indigenous peoples and, where appropriate, make recommendations on measures to be taken to guarantee their enjoyment of human rights. He also had the task of promoting discussion and awareness-raising on those issues, as well as undertaking research and instituting programmes, including in the field of education, to ensure better observance of the rights of Australian indigenous people. Lastly, he was entrusted on occasion with examining bills submitted to Parliament and reporting to the Commonwealth Attorney General on the extent to which those bills were compatible with respect for indigenous rights.

10. Furthermore, he had been entrusted by the Royal Commission into Aboriginal Deaths in Custody with finalizing an educational programme designed to inform Aboriginal persons and communities about anti-discrimination laws and the remedies available to them at the federal level and in the states and territories, as well as with developing a training programme aimed at enabling lawyers working in the field to provide better service in the area of human rights to their indigenous clients.

11. In addition, he was requested to report on the implementation of the Native Title Act and its effects on the exercise of human rights by Australian indigenous peoples, and he took a seat on the Australian Human Rights and Equal Opportunity Commission. For him and his services to be able to discharge their many functions, he needed adequate funding; however, despite laudable efforts, notably by Mr. Tickner, that funding did not yet match his expectations.

12. With reference to paragraph 84 of the report (CERD/C/223/Add.1), the first "State of the Nation" report on people of non-English-speaking background, which he had released in December 1993, reviewed areas of disadvantage suffered by five groups: post-war immigrants, predominantly European, arriving in Australia between 1946 and 1972; more recent immigrants, arriving after 1975 and mainly non-European; women of non-English-speaking background; refugees and asylum-seekers; and young people of non-English-speaking background. The major concern expressed in the report was about the particularly high rate of unemployment - in some cases four times the average - in those five groups. Some segregation in industry and a lack of labour market mobility were also noticeable and the question was whether Australia was at risk of developing an ethnic underclass who were marginalized and whose disadvantage was passed from one generation to the next. The Australian Government had reacted positively to the report. Acknowledging the damaging effects of unemployment and especially long-term unemployment, it had recently created 50 migrant liaison officer positions within the Department of Employment, Education and Training. The Government was also reassessing its labour market programmes and making specific reference to those facing barriers of language and culture. The report also noted that data on "quality of life" indicators for young people of non-English-speaking background were insufficient and it urged better ethnicity data collection, long-term evaluation and greater awareness of that target group. The next "State of the Nation" report would contain a study on young people of non-English speaking background and juvenile justice.

13. With reference to paragraphs 109-114 of the report, a bill on racist violence and racial vilification had been tabled but not examined by Parliament for lack of time, and it was planned to reintroduce the bill shortly. The Human Rights and Equal Opportunity Commission was very favourable to the passage of the bill. Concerning paragraph 117 of the report (CERD/C/223/Add.1), a very recent report by the New South Wales Ombudsman reiterated the systematic racism within that State's police force. Moreover, two of the three recommendations cited in paragraph 123, namely recommendations (a) and (b), had not yet been implemented. It should also be pointed out, with reference to paragraph 126, that the Industrial Relations Reform Act 1993 contained provisions on sex and race discrimination.

14. With regard to education and teaching (paras. 191-195 of the report), the video mentioned in paragraph 193 and a substantial amount of notes forming a training package were being actively marketed by the Human Rights and Equal Opportunity Commission. In addition, the New South Wales Education and Training Foundation had produced a second video directed specifically at small businesses, many of which were run by people of non-English-speaking background, and the Commission was also marketing those cassettes directly to the target group. The question of the recognition of overseas skills, both in medicine and in other fields, remained a vexatious one for the Race Discrimination Commissioner. Many professional organizations responsible for the registration of overseas qualifications did not fall within the jurisdiction of the Commissioner and it was difficult for him to intervene on behalf of complainants. It was to be hoped, however, that the current national movement to competency-based training would contribute to the recognition of qualifications obtained abroad. The report on the rights of workers of non-English-speaking background who might be faced with retrenchment (para. 196) had been released in February 1993 and had focused particularly on older retrenched immigrant workers.

15. The water report (para. 197) had been submitted in May 1994 and had been very favourably received by the competent authorities and, in particular, by Mr. Tickner. It concluded that the provision of services to Aboriginal and Torres Strait Islander communities presented not so much a technical challenge as a social and political one. The technology failed either because it was inappropriate to the real needs of the community or because the training and resources for long-term maintenance had been overlooked. Many of the ways in which western-trained, urban technologists and consultants went about servicing indigenous communities militated against self-determination. The report made some recommendations on how to adapt the services to community needs but concluded that there would be no long-term improvement until the communities themselves were involved in decision-making and management of resources.

16. The Baryulgil review process (paras. 198 and 199 of the report) had been slow and real progress in decontaminating the townships appeared to be slight. Human Rights and Equal Opportunity Commission officers had revisited the towns in February 1994 and the report on their visit and the consultations that had occurred during the past few years would be published by his office in August 1994. The Mornington report had been released in April 1993, with 91 recommendations directed at improving the conditions for the Aboriginal community on Mornington Island. A number of those recommendations echoed those of the Royal Commission into Aboriginal Deaths in Custody and of the report of the coroner inquiring into the death of a young Aboriginal man in the Mornington Island watchhouse. The report concluded that the community on the island was living in "colonial" conditions that would not be tolerated elsewhere in Australia. The Human Rights and Equal Opportunity Commission review team had revisited the island in April 1994, and had contacted all government departments to which recommendations had been directed in the first report. He would publish a review of the situation on Mornington Island in August 1994.

17. The Attorney General had tabled a report in the Federal Parliament in April 1993 on the status and conditions of Australian South Sea Islanders living in Australia. The report had been warmly endorsed by the South Sea Islanders themselves, who over the past year had been active in renewing cultural links with the islands from which their forebears had been brought. However, a formal response was still being awaited from the Australian Government, which it was to be hoped would address the concerns of that small but unique community.

18. The pilot community information programme for Aboriginal and Torres Strait Islander peoples (paras. 206 and 207 of the report) was now under way in Queensland. The programme would be expanded and adapted to the needs of the various States and Territories and it was hoped that it could be applied throughout the country. Also, the code of practice for real-estate agents and landlords (para. 212 of the report) had been developed as planned and was being made available by the National Real-Estate Institute.

19. The Race Discrimination Commissioner had launched an outreach programme in the latter half of 1992 to inform Arabic-speaking Australians of their rights and obligations. That community education campaign had relied on government and community radio stations broadcasting in languages other than English. It had also broken new ground in moving away from the use of classical Arabic, utilizing instead five common Arabic dialects. During 1993 and 1994, similar radio information had been provided regularly in Greek and Turkish.

20. With regard to health, the findings and recommendations of the Cooktown report (paras. 231 to 236) concerning birthing procedures and facilities for indigenous women had been referred to in the Mornington report. Also, the mental illness report (paras. 237 and 238) had been tabled in Parliament in November 1993 and had received wide publicity. Since then, it was noted that some States, and the Commonwealth Government itself, had undertaken to increase the resources devoted to mental health in their budgets.

21. The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs had prepared a report on the Access and Equity Strategy, recommending that the services of the Aboriginal and Torres Strait Islander Social Justice Commissioner should provide follow-up of the Strategy in respect of indigenous peoples. He was not opposed to the idea of adding that task to his many other responsibilities, provided that the appropriate resources were allocated for the purpose.

22. The Standing Committee had inquired into the Commonwealth's annual report on the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. He had made a submission to that inquiry which Mr. Tickner had described as rather stringent. It was true that no less than two thirds of the Royal Commission's recommendations concerned the States and Territories rather than the Federal Government, but he believed that the Federal Government nevertheless had an important role to play in the implementation of those recommendations and that it had not yet performed its role, although the same criticism certainly applied just as much, if not more, to the State and Territory authorities.

23. Lastly, he unreservedly supported what Mr. Tickner had said about the High Court's decision concerning indigenous land rights, where an enormous amount of valuable work had been done. It should be emphasized that to ensure that indigenous people really had access to social justice, they must have their rights restored and not be dependent on new social welfare programmes. Such deep changes would require a great deal of time and effort, and the people concerned would themselves have to play a decisive role.

24. Mr. BANTON (Rapporteur for Australia) requested the members of the Committee to refer to the document (without a symbol, in English only) which had been distributed to them and contained his analysis of Australia's ninth periodic report (CERD/C/223/Add.1). The analysis followed the order of the articles of the Convention and he would highlight the main points. First of all, there were certain difficulties in counting the Aboriginal population due to the confusion between self-identified Aboriginals and Aboriginals of verified descent that resulted from the fact that between 1883 and 1963 all part-Aboriginal children (one in six Aboriginal children in New South Wales) had been removed from their families and taken to missions to be brought up. That had given rise to a so-called "lost generation", which now created problems of identification with all the consequences that implied, particularly in regard to the claiming of land rights.

25. In connection with article 1 of the Convention, he wished to emphasize the importance of paragraph 33 of the report, where it was indicated that the Racial Discrimination Act had been amended to provide that if an act was done for several reasons and one of the reasons was race, the act was taken to be unlawful for that discriminatory reason, even if it had not been the dominant reason. Some States might well benefit from taking the approach adopted by Australia.

26. Referring to article 2 in conjunction with article 4 (a) of the Convention, he recalled the Koowarta case, named after the representative of a tribe of Aboriginal stockmen who, availing themselves of federal legislation, had attempted to acquire land in 1976, but without success, the transfer having been vetoed by the then Government of Queensland, although the High Court had held that the veto had contravened the Racial Discrimination Act 1975. Koowarta had died in 1991 not having been able to overcome the inertia of the system, but he would have had good grounds to approach the Committee under the terms of article 14, paragraph 7, of the Convention. That case had been symptomatic of the inertia that had characterized the administration and judicial system of the 1980s and of which the Koowarta clan had unfortunately not been the only victims.

27. The various stages of the Mabo case, named after Eddie Mabo, who with some other residents of Murray Island in the Torres Strait had filed a claim to ownership of their island under native title, bore witness both to the contradictions between Federal and State Government positions and to the difficulties of interpretation of the principles of common law. They had nevertheless led to a decision consistent with the generally accepted interpretation establishing that pre-existing land rights had survived the extension of United Kingdom sovereignty over Australia and might still survive

today, provided that the relevant native group maintained sufficient ties with the land in question and that the title had not been extinguished as a consequence of valid governmental action.

28. The later judgement in the Mabo case had had two consequences. First, it had cast doubt on the validity of land grants between 1975 and 1992, and it had seemed at one time that, in order to remove that uncertainty, it might be necessary to suspend the Racial Discrimination Act. That was within the power of the Commonwealth Parliament, which could also extinguish native title (unlike in Canada, where the Constitution affirmed such rights), thereby raising the question of compensation. Tribunals would be established to resolve that question. A fund would also be set up to facilitate land acquisition for the benefit of Aboriginal Australians unable to claim pre-existing land rights. Currently, the courts in Queensland were, moreover, considering the question of mining royalties in the Wik case and the Committee hoped to hear the outcome of that case shortly. Secondly, the judgement could serve as the basis for Aboriginal claims to land in the Kimberleys, Cape York and the desert areas. That would benefit some 5 to 10 per cent of the Aboriginal population. Many Australians believed that it would not compensate the other 90 per cent for more than 200 years of dispossession.

29. The Council for Aboriginal Reconciliation Act 1991 (paras. 39 and 40 of the report) was a measure of great potential interest. Reconciliation between ethnic groups was a problem in many countries and any reconciliation policy deserved the closest attention and general publicity. That could be arranged within the plans for the Third Decade to Combat Racism and Racial Discrimination. The first two annual reports of the Council (which had seven more years in office) suggested that it was still formulating a philosophy. It was to be hoped that it could eventually serve as a model for other States confronted with the same problem. The Committee would appreciate being informed about its progress.

30. Regarding article 3, which was primarily concerned with the prevention and prohibition of racial segregation in territories under the jurisdiction of the reporting State, he was grateful to Australia for the information provided on its relations with South Africa but wished to point out that article 3 also extended to segregation in housing and education in places such as Toomelah and Goonawindi, on which further information was desirable.

31. Turning to article 4 of the Convention, he wondered whether, in view of Tasmania's attitude, to which reference was made in paragraph 54 of the report, the Commonwealth Government was considering measures to ensure the implementation of article 4 in that State, and whether it was satisfied with the situation as described in paragraphs 73 and 74. He would be pleased if Mr. Tickner could reply directly to those questions. The various States had provided an abundance of documentation on the initiatives they had taken to implement article 4, but the Commonwealth Government, as the signatory to the Convention, should - and that was perhaps the most important request he wished to make - complement that information and make its own views known to the Committee.

32. He was pleased that, in the written statement circulated to members of the Committee, Mr. Tickner had given a quite clear indication of what one representative of Australia understood by "multiculturalism". Like "pluralism", that was an all-purpose word which anyone could use in whatever meaning suited his political interests. He would like Mr. Tickner to complement his presentation by explaining the Government's view of multiculturalism as a social philosophy.

33. In connection with article 5, he had a few questions to ask about the Ombudsman's report and recommendations to Parliament on allegations of police bias against Asian students. He would like to know whether the Ombudsman's recommendations had been acted upon, whether the police officers involved had been counselled as to the proper exercise of their powers, whether Assistant Commissioner Cook had appreciated the need to give all due attention to the concerns of the community being policed and whether the police service which had arrested the students had apologized to their families.

34. Referring to the inquiry into race relations requested from the Ombudsman by the New South Wales Minister for Police and to the consultation document resulting from that inquiry, he asked whether the Commonwealth Government, as the signatory to the Convention, was ensuring that other States followed the example of New South Wales.

35. Concerning the situation of Aboriginals in detention, the report of the Royal Commission into Aboriginal Deaths in Custody was very full. The commentary on the report prepared by the Australian section of the International Commission of Jurists (ICJ) was of interest in that regard and he hoped that the commentary, the third from a national section of ICJ, would not be the last. Furthermore, he was in possession of a Royal Commission report on Aboriginal Australians and Torres Strait Islanders indicating that the number of Aboriginal deaths in custody between May 1989 and January 1994 had not fallen, partly because key reforms advocated by the Commission had not been instituted. He understood the difficulty of regulating the conduct of members of the police and prison staff through legislation, but thought that codes of practice which, like the highway code, covered in detail the situations that occurred in everyday life would not be a bad way of tackling that issue. Even if the Committee decided that it would be sufficient for Australia to submit its next report as a simple update, the State party should be urged to include in it detailed information on the question of Aboriginal deaths in custody.

36. The ninth report did not provide any answer to the question he had asked in 1991 on follow-up to the recommendations of the Commission which had inquired into the incidents in Toomelah and Goonawindi in 1981. Some very serious shortcomings of the administration had been at the origin of the trouble, and that situation was representative of what was certainly also happening elsewhere in Australia. The Committee should take a very particular interest in the matter to see what lessons could be drawn from those incidents concerning the improvement of local government. He regretted the lack of information on those islands in the ninth periodic report and would like to know whether the Commonwealth Government was satisfied with the situation.

37. Article 5 (a) and (b) concerned equal treatment before the tribunals and protection by the State. The Committee should be informed about the positions given to Aboriginal people in the criminal justice system, as prison staff, police officers, social workers, etc. Article 5 (c) guaranteed the right to participate in elections. To what extent did Aboriginals take part in the electoral process? The report said nothing on the subject. Concerning article 5 (d), he would like to know what follow-up had been given to the recommendations of the Law Reform Commission concerning the recognition of Aboriginal customary law. With regard to article 5 (e), he wondered whether the social indicators, which needed to be particularly appropriate for monitoring developments given the abundance of data, had been properly defined.

38. He was not entirely convinced by what was said in paragraphs 185 to 188 of the report concerning the implementation of article 6. He would like to have the views of the victims. At the same time, he recognized that, in some sectors of the employment market, it was difficult to offer the kind of protection envisaged by the Convention.

39. On the implementation of article 7, the Committee had detailed information about the steps taken, but too few details on the measures designed to evaluate their effectiveness, for example, in regard to the non-classical education programme.

40. In conclusion, he recognized that Australia had been making considerable efforts since 1968 and hoped that the Third Decade to Combat Racism and Racial Discrimination would enable other countries to draw benefit from its experience.

41. Mr. van BOVEN commended the seriousness with which Australia took its obligations. Four points in the country's report had particularly attracted his attention. The first was the question of indigenous property rights as seen in the light of the decision taken in the Mabo case to reject the notion of terra nullius. That decision was indeed of capital importance. It seemed perfectly natural in the present era to consider, as did the Universal Declaration of Human Rights, that every individual was a person, that "everyone has the right to recognition everywhere as a person before the law", but it should be remembered that in the 1930s the Court at The Hague had already found that concept absolutely contrary to human rights and yet it had been one of the pillars of colonialism. The Native Title Act had been passed in 1993 following the Mabo decision. As Mr. Tickner pointed out in his written note, that decision had multiple repercussions in the fields of justice, economic development and reconciliation. The High Court had declared that the Aboriginals had gradually been dispossessed of their lands for the benefit of the settlers, thereby ensuring the development of the nation. It had thus not hesitated to address the redoubtable issue of reparation for historic wrongs. He had dwelt on that issue in the study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8) which he had completed for the Sub-Commission. He had concluded that such wrongs were virtually irreparable for the most part, but that it was still

possible to take steps in vital areas for indigenous peoples such as land rights, rights to natural resources and environmental protection. International law in that field was in the embryonic stage. ILO Convention No. 169, which stipulated that indigenous peoples had the right to compensation for damage resulting from programmes for the exploration or exploitation of their lands, or to reinstallation, was already one element. Another was the draft universal declaration on indigenous rights currently being studied in the Sub-Commission, which provided for various forms of compensation for indigenous peoples who had suffered injury. With the Native Title Act, Australia was breaking new ground. He wondered how far back it had decided to go in history, whether it required deeds and on what criteria it calculated the compensation. In that regard, he noted the use of the term "grant" in paragraph 76 of the report and wondered whether "restitution" might not be more appropriate. He would also like the Committee to be informed about the debate that had been held on the Native Title Act. Western Australia had passed its own legislation extinguishing native title. That raised a problem of constitutionality of the law of a State. It would be of interest to know what weight the courts attached to the International Convention on the Elimination of All Forms of Racial Discrimination and to ILO Convention No. 169 in such cases.

42. The second point that had attracted his attention was the rather unfavourable response by the Governments of some States to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. That, too, was a matter of the degree of autonomy of the States. Where did that autonomy end? He was surprised, furthermore, to see how paragraphs 45 and 46 of the report presented the implementation of those recommendations in terms of figures. Funding, in his view, would not in itself solve all the problems. A policy of recruiting Aboriginals into the police force, for example, was not primarily a question of dollars. He urged the authorities concerned to follow the Committee's General Recommendation XIII in providing the requisite training to the police. Lastly, he sought clarification regarding information from the Minority Rights Group to the effect that Aboriginals were in trouble with the police and the criminal justice system more often than other people.

43. The implementation of article 4, and more specifically Australia's reservation in regard to subparagraph (a) of that article, was the third point on which he would like to dwell. That reservation, discussed in paragraph 109 et seq. of the report, had been worded in such a way as to suggest that it would be removed quite quickly. The Australian Government had declared that it had not been in a position at the time to withdraw the reservation, but intended "at the first suitable moment, to seek from Parliament legislation" for that purpose. Paragraph 112 stated that the reservation would be removed "should passage of the proposed legislation proceed"; a bill had been tabled, but had then lapsed with the dissolution of the House of Representatives and would have to be reintroduced during the new term of Parliament. He would like to know where matters stood on that long overdue issue.

44. The report and the documentation provided to the Committee dealt essentially with social rights. He was pleased about that since it was quite often in that area that discrimination was felt most keenly. According to

information from minority rights associations, important measures had been taken, particularly in the field of education, but much still remained to be done, as the Australian delegation had acknowledged, especially with regard to infant mortality, disease, street violence and poverty due to unemployment. As the most vulnerable segment of society, Aboriginals were particularly affected by those phenomena. In the report and in the immense amount of documentation made available to the Committee, however, he found almost nothing relating to political rights. He would like to have information on the political representation of Aboriginals and other minorities, both locally and nationally, and their participation in any political or social organizations, perhaps even trade unions.

45. Like Mr. Banton, he was pleased that Australia was one of the 13 countries that had formally accepted the proposed amendment to article 8, paragraph 6, of the Convention, which aimed to provide a sounder financial basis for the Committee's activities. Lastly, he noted that Australia had recently made the declaration provided for in article 14, recognizing the Committee's competence to consider communications. Was that procedure well known in Australia? What steps were being taken to publicize it?

46. Mr. ABOUL-NASR said it was the second time that he was considering, with admiration, a report submitted by Australia. He was especially pleased to see Mr. Dodson participating in the Committee' work. That was a first, and he hoped not the last, such experience. He commended the frankness of the representative of Australia - a frankness he proposed to emulate. He would confine himself to two comments. First, Mr. Dodson had brought to the Committee thousands of pages of documents which were the product of very serious work and contained many recommendations and suggestions. What authorities had read those documents? What steps had been taken to give effect to the recommendations and suggestions they contained? Had Mr. Dodson played a role in the decision-making? To what extent were Aboriginals involved in the implementation of the decisions? On the question of native title, as referred to by Mr. van Boven, he did not believe that extensive research was necessary. The Aboriginals had not had any land registers or deeds that could be uncovered, but they all knew where their lands were. All that was needed was the political will to compensate them, and that will did seem to exist.

47. Secondly, the representative of Australia had raised the very important question of a country's identity and had indicated that it would be resolved for Australia by the year 2001. That was a long time. It had not taken so long for South Africa - whose problems were far more serious than those of Australia - to make its choice. It recognized itself as an African country and was a member of the Group of African States at the United Nations. Australia remained a member of the Group of Western European and other States, those "other States" including Australia and New Zealand, yet it was enough to look at a map to see, without waiting for 2001, that they were linked to another continent, Asia. He requested the representative of Australia to excuse such rather brutal frankness - that he himself had authorized.

48. Mr. DIACONU said that he was impressed by the quality of Australia's report, by the wealth of the documentation presented and by the measures taken by the Australian legislative and administrative authorities at all levels, as well as by the sincerity of the members of the Australian delegation and their personal commitment to human rights. According to his information, only a third of Australian Aboriginals lived in rural areas. The other two thirds lived in the cities. In view of the various laws on native title that had been or were to be promulgated, what was the current trend among Aboriginals? Were they continuing to leave rural areas to settle in the cities? Or were they returning to take possession of their lands? Were the Aboriginals in the cities adapting to urban life? It was upon the answers to those questions that the kind of reconciliation achieved by the year 2001 would depend.

49. The Racial Discrimination Act 1975 (paras. 30 to 33 of the report), the fundamental legislation on the subject, was a federal act applicable in all the States making up Australia. It took precedence over any other legislative or regulatory provision. However, with each State having its own legislation and its own judicial authorities, was there not a risk of that system leading to conflicts of law or conflicts between judgements rendered by the courts of different States? The formal process of reconciliation launched by Australia (paras. 39 and 40 of the report) was a remarkable initiative, setting an example that should be followed in other countries. Besides Aboriginal people, however, the reconciliation process should also involve other communities, such as some of the European communities established in Australia.

50. With regard to the implementation of article 4 of the Convention, he was pleased to note Australia's declared intention to consider withdrawing the reservation it had entered concerning article 4 (a) (para. 109 of the report). However, he could not go along with the argument that it would be unnecessary to ban organizations whose main function was the public promotion of racism once their activities were declared illegal (para. 113). Article 4 (b) of the Convention obliged States parties to declare illegal and prohibit organizations engaging in racist activities. They must prevent the very creation and existence of such organizations.

51. He noted the difficulties raised in the States concerning the application of federal laws and implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. Some two thirds of the Commission's recommendations were directed to the Governments of the States and Territories, which had direct jurisdiction over such matters as policing and custodial practice, inquests into deaths and reforms of the judicial system. There was a risk, therefore, that those two thirds of the Royal Commission's recommendations would become a dead letter. What was the federal Government intending to do to ensure that those recommendations were actually implemented? Lastly, racial discrimination could also be practised against persons who were of non-Aboriginal racial or ethnic origin different from that of the majority of Australians and who none the less represented 22 per cent of the country's population. There had, for example, been reports of racist violence against students of Asian origin. What steps was the Australian Government proposing to take at the federal level to prevent such violence? Australia was going through a difficult period. He hoped that the current difficulties would lead to specific measures and concrete results.

52. Mr. de GOUTTES commended the Australian delegation on the exceptional quality of its report and the presentation it had made. He was pleased not only by the high level of the Australian delegation but also by its pluralism, since it included both a federal minister and an independent commissioner. That was a new experience, from which the Committee should draw lessons for other delegations. He also wished to thank the Australian delegation for the documentation provided, although its very abundance revealed the exceptional scale of the ethnic problems faced by Australia and echoed by non-governmental organizations such as Amnesty International and the International Commission of Jurists.

53. Australia's ninth report was characterized above all by its rigour. It contained precise basic statistical data on the composition of the population (paras. 6 and 7) and on the number and categories of complaints lodged under the Racial Discrimination Act 1975 (table 1 following paragraph 188). That table could, however, have usefully included information on the nature and severity of the sentences resulting from those complaints. The severity of sentencing was a valuable indicator of the importance attached by the judicial authorities to the punishment of racism, and therefore of the priority given to combating racism in a country's general prosecution policy.

54. The report was notable also for the willingness to indicate, in all sincerity, what was wrong in the country. Such frankness was quite rare. It was evident particularly in the very critical findings contained in the report of the Royal Commission into Aboriginal Deaths in Custody (paras. 41 and 42 of the report), which had investigated not only the causes of the specific deaths but also the underlying social, cultural and legal issues associated with them, and had made over 300 recommendations. He noted the importance attached by the Royal Commission to indicators of social non-integration of Aboriginals, indicators to which the Committee had always called the attention of Governments. Equally frank were the conclusions of the National Inquiry into Racist Violence, among which he had in particular noted the finding that "racist violence against Aboriginal and Torres Strait Islanders was endemic, nation-wide and very severe" (para. 115 (a)).

55. The report was further characterized by the declared willingness to attack the root causes of racial discrimination. That appeared both in the 339 recommendations of the Royal Commission and in the 67 recommendations of the National Inquiry. The two sets of recommendations covered extremely varied fields - justice, the police, health, education, housing, the workplace, employment and community infrastructure. The task was therefore very large.

56. Lastly, the report reflected the scope of the measures and programmes envisaged. It referred to the proposals of the Royal Commission (para. 43), the Council for Aboriginal Reconciliation (paras. 39 and 40) and the Aboriginal and Torres Strait Islander Commission (para. 25 (a)), as well as to the community development employment projects (para. 25 (b)), the Australian Government's Land Acquisitions Program (para. 58) and the National Integrated Settlement Strategy for Migrants (para. 79). Was there not a risk of so many measures and proposals creating difficulties of coordination and centralization? Had steps been taken to avoid duplication of effort?

57. The civil and criminal law reforms proposed by the Royal Commission and by the National Inquiry into Racist Violence were of very particular interest to the Committee. He had four questions in that regard. First, which of the many proposed law reforms had been endorsed by the Government? The reform mentioned in paragraph 138 (a), on taking account of an offender's cultural background when considering whether to proceed to a conviction or when passing sentence, was highly original and a form of "affirmative action" in the judicial sphere. Had it been endorsed? Secondly, when would the proposals be adopted by the House of Representatives? Thirdly, would they be sufficient to meet all the requirements of article 4 of the Convention? Fourthly, would they enable the Australian Government to withdraw its reservation to article 4 (a) of the Convention?

58. He wished to underline the exemplary nature of Australia's report, which deserved to be held up as a model for other delegations.

The meeting rose at 6.05 p.m.